

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

MICHAEL OAKLEY,	:	
	:	
Plaintiff	:	CIVIL ACTION NO. 3:20-1996
	:	
v.	:	(JUDGE MANNION)
	:	
JUDGE MICHAEL J. BARASSE,	:	
ESQUIRE DAVE CHERUNDOLO,	:	
	:	
Respondents	:	
	:	

ORDER

Pending before the court is the report of Magistrate Judge Joseph F. Saporito, Jr., which recommends that the plaintiff's complaint be dismissed as legally frivolous pursuant to the provisions of 28 U.S.C. §1915(e)(2)(B)(i) and 28 U.S.C. §1915A(b)(1). (Doc. 11). No objections have been filed to the report. Upon review, the report and recommendation will be adopted in its entirety.

When no objections are filed to a report and recommendation, the court should, as a matter of good practice, "satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." Fed.R.Civ.P. 72(b), advisory committee notes; see also Univac Dental Co.

v. Dentsply Intern., Inc., 702 F.Supp.2d 465, 469 (M.D.Pa. 2010) (citing Henderson v. Carlson, 812 F.2d 874, 878 (3d Cir. 1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); Local Rule 72.31.

As stated by Judge Saporito in his report, the plaintiff's civil rights complaint is brought against the Honorable Michael J. Barrasse, a state court trial judge, and David P. Cherundolo, Esquire, a court-appointed public defender, in relation to the plaintiff's state court criminal proceedings. Upon review, Judge Saporito determined that the instant action should be dismissed as the claims against Judge Barrasse are barred by the doctrine of absolute judicial immunity and because Attorney Cherundolo, as a court-appointed public defender, is not amenable to suit under §1983. Alternatively, Judge Saporito recommends dismissal of the plaintiff's complaint pursuant to the favorable termination rule articulated by the United States Supreme Court in Heck v. Humphrey, 512 U.S. 477 (1994). As indicated, no objections have been filed to Judge Saporito's report.

The court has reviewed Judge Saporito's report and agrees with the sound reasoning upon which his recommendation for dismissal is made. Further, the court finds no clear error of record. As such, the court will adopt the report in its entirety.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

(1) The report and recommendation of Judge Saporito, **(Doc. 11)**, is **ADOPTED IN ITS ENTIRETY.**

(2) The plaintiff's complaint, **(Doc. 1)**, is **DISMISSED** pursuant to the provisions of 28 U.S.C. §1915(e)(2)(B)(i) and 28 U.S.C. §1915A(b)(1).

(3) The Clerk of Court is directed to **CLOSE THIS CASE.**

s/ Malachy E. Mannion
MALACHY E. MANNION
United States District Judge

DATE: February 8, 2021

20-1996-01